

FILED

FEB 14 2002

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CLERK, U.S. DISTRICT COURT

By Deputy

BILL GOOD, et al.

v.

BURLINGTON NORTHERN RAILROAD
COMPANY, a Delaware corporation, et al.

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Civil Action No. 3-98-CV1273-L

AGREED MOTION TO DISMISS WITH PREJUDICE

Plaintiffs and Defendants hereby jointly move the Court for an order dismissing this case with prejudice. In support of their Motion, Plaintiffs and Defendants state as follows:

I.

BACKGROUND FACTS

1. On May 29, 1998, Plaintiffs filed their Original Complaint in this lawsuit. That Complaint alleged substantially the same background facts and causes of action as were alleged in the related case, *James D. McCall, et al. v. Burlington Northern Railroad Company, a Delaware corporation, et al.*, Civil Action No. 3-96-CV2205-R, in the United States District Court for the Northern District of Texas, Dallas Division (the "McCall Case"). The Defendants in this case were also the same as the Defendants named in the McCall Case.

2. On July 10, 1998, Defendants filed their Answer to the First Amended Complaint and Counterclaim.

3. On August 31, 1999, the Court entered final judgment in favor of the Defendants in the McCall Case. Plaintiffs in the McCall Case timely filed and prosecuted an appeal of that judgment.

4. On July 17, 1998, the Court entered an Order staying all further proceedings in this matter, pending final determination of the appeal filed by the McCall Case Plaintiffs. The Court subsequently entered other Orders extending the stay in this case.

5. On December 26, 2000, the Fifth Circuit affirmed the Court's Judgment. The McCall Case Plaintiffs subsequently filed a Petition for Rehearing, which was denied on March 12, 2001, and a Petition for Writ of Certiorari, which was denied on October 1, 2001. As such, the McCall Case has been finally resolved in favor of the named Defendants in that action.

II.

DISCUSSION


Plaintiffs herein continue to believe in the claims alleged in their Original Complaint. Nonetheless, in light of this Court's Opinion and Judgment in the McCall Case, and the Fifth Circuit's decision affirming that Judgment, Plaintiffs hereby move to dismiss with prejudice all claims asserted in Plaintiffs' Complaint. Similarly, Defendants hereby move to dismiss with prejudice all claims asserted in their Counterclaim.

The parties further advise the Court that counsel for Plaintiffs have contacted each named Plaintiff in writing, advised them of their right and options, and obtained consent for the filing of this Motion.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs and Defendants respectfully pray that the Court grant this Motion, dismiss this case with prejudice, and assess costs against the party incurring same.

Respectfully submitted,

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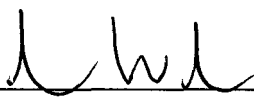
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served upon counsel of record, as identified below, on this the 14th day of February, 2002.

Via Facsimile and First Class U.S. Mail

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